

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JAMES PLONSKER,

Plaintiff,

v.

**NATIONAL ASSET RECOVERY
SERVICES, INC. and GREG CAPP**

Defendants.

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Case No. 08cv4033

**District Judge Aspen
Magistrate Ashman**

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Come now Defendants NATIONAL ASSET RECOVERY SERVICES, INC. and GREG CAPP, through their attorneys, and pursuant to Federal Rule of Civil Procedure 12(b)(6) file this Motion to Dismiss and rely upon the following along with their Memorandum in Support of Their Motion to Dismiss filed this date as their Motion.

On June 9, 2008, Plaintiff filed a four Count Complaint against Defendants National Asset Recovery Services, Inc. ("NARS") and Greg Cappa ("Mr. Cappa") which was served upon NARS¹ on June 19, 2008 and was timely removed on July 16, 2008.

1. At Count I of his Complaint, Plaintiff alleges Conversion because Defendants refused to pay future commissions Plaintiff allegedly earned under his Employment Agreement. Count I fails because Plaintiff has improperly sued in tort for conversion to recover purely economic damages and remedy a breach of contract to recover a nonspecific sum, neither of which is permissible.

¹ This Complaint has yet to be served upon Defendant Mr. Cappa; nevertheless, the grounds for dismissal of this Complaint would apply to his situation as well. While Mr. Cappa has yet to be served, he voluntarily appeared when the case was removed to this Court.

2. At Count II of his Complaint, Plaintiff alleges fraud contending Defendants misrepresented the conditions under which Plaintiff would work for NARS. Plaintiff contends that NARS hired him representing that it would abide by an "Employment Agreement" that NARS failed to sign and pursuant to which it has allegedly refused to pay commissions due. Count II fails because Plaintiff's allegations of fraud do not satisfy the heightened pleading requirements of Fed.R.Civ.P. 9(b), and the claim is premised upon alleged misrepresentations of future facts and speculative conclusions.

3. At Count III, Plaintiff alleges Breach of Contract contending NARS refused to perform the terms of his Employment Agreement by refusing to continue to pay commissions following Plaintiff's termination of employment per Plaintiff's alleged Employment Agreement with NARS. Count III for breach of contract fails because the contract in issue does not satisfy the Missouri or Illinois Statute of Frauds.

4. Count IV simply seeks an accounting of the sums due. Count IV and fails as a result of the foregoing.

WHEREFORE, Plaintiff's Complaint should be dismissed and Defendants awarded costs and attorneys fees and such other relief at this Court determines appropriate.

Respectfully submitted,

Defendants, NATIONAL ASSET
RECOVERY SERVICES, INC., and GREG
CAPPA

By: /s/ Donald J. Vogel
One of Their Attorneys

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Attorneys for Defendants National Asset
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CERTIFICATE OF SERVICE

I hereby certify that I have on this 30th day of July, 2008 served a true and correct copy of the foregoing through the electronic case filing system of the United States District Court for the Northern District of Illinois to the following counsel:

Tracy E. Stevenson
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and via First Class U.S. Mail to:

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/s/Donald J. Vogel